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CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Ordinance No. 1813 Entitled, "An Ordinance of the City Council of the City of Lodi Amending Lodi Municipal Code Chapter 5.32 – Massage Establishments – by Repealing and Reenacting Section 5.32.010, 'Definitions'"

MEETING DATE: July 16, 2008

PREPARED BY: City Clerk

RECOMMENDED ACTION: Motion waiving reading in full and (following reading by title) adopting the attached Ordinance No. 1813.

BACKGROUND INFORMATION: Ordinance No. 1813 entitled, "An Ordinance of the City Council of the City of Lodi Amending Lodi Municipal Code Chapter 5.32 – Massage Establishments – by Repealing and Reenacting Section 5.32.010, 'Definitions,'" was introduced at the regular City Council meeting of July 2, 2008.

ADOPTION: With the exception of urgency ordinances, no ordinance may be passed within five days of its introduction. Two readings are therefore required – one to introduce and a second to adopt the ordinance. Ordinances may only be passed at a regular meeting or at an adjourned regular meeting; except for urgency ordinances, ordinances may not be passed at a special meeting. Id. All ordinances must be read in full either at the time of introduction or at the time of passage, unless a regular motion waiving further reading is adopted by a majority of all council persons present. ***Cal. Gov't Code § 36934.***

Ordinances take effect 30 days after their final passage. ***Cal. Gov't Code § 36937.***
This ordinance has been approved as to form by the City Attorney.

FISCAL IMPACT: None.

FUNDING AVAILABLE: None required.

A handwritten signature in black ink, appearing to read "Randi Juhl".

Randi Juhl

City Clerk

RJ/jmp
Attachment

APPROVED:

A handwritten signature in black ink, appearing to read "Blair King".

Blair King, City Manager

ORDINANCE NO. 1813

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
LODI AMENDING LODI MUNICIPAL CODE CHAPTER 5.32 –
MESSAGE ESTABLISHMENTS – BY REPEALING AND
REENACTING SECTION 5.32.010, “DEFINITIONS”

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI **AS** FOLLOWS:

SECTION 1. Lodi Municipal Code Title 5.32 – Massage Establishments – is hereby amended by repealing and reenacting Chapter 5.32.010, “Definitions,” to read as follows:

5.32.010 Definitions.

Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning, and application of words and phrases used in this Chapter.

“Chief of Police” means the Chief of Police of the City of Lodi, or his/her designated representative.

“City Manager” means the City Manager of the City of Lodi or his/her designated representative.

“City Council” means the City Council of the City of Lodi.

“Conviction” or “Convicted” means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

“Client Area” means areas open to customers of the massage establishment.

“Employee” for purposes of this Chapter, the term “employee” shall include independent contractors.

“Health Department” means San Joaquin County Public Health Services.

“Manager” means the person(s) designated by the operator of the Massage Establishment to act as the representative and agent of the operator in managing day-to-day operations with the same liabilities and responsibilities. Evidence of management includes, but is not limited to, evidence that the individual has power to direct, hire, or dismiss employees, control hours of operation, create policies or rules, or purchase supplies. A manager may also be an owner. A manager must meet the standards and qualifications of Section 5.32.030, et seq., to qualify as a manager and obtain a massage technician’s permit.

“Massage” means any method of treating the external parts of the body for remedial, hygienic, relaxation, or any other reason or purpose, whether by means of pressure on, friction against, or stroking, kneading, tapping, pounding, vibrating, rubbing, stimulating, or other manner of touching the external parts of the body with the hands or with the aid of any mechanical or electrical apparatus or appliance with or without supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments, or other similar preparations commonly used in the practice of massage. However, “massage” shall not include any massage of the hands, feet or calves given by a manicurist licensed by the California Board of Barbering and

Cosmetology in connection with a manicure or pedicure performed in an unenclosed area of a salon.

“Massage Establishment” means any business conducted within the City of Lodi where any person, firm, association, partnership, corporation, or combination of individuals engages in, conducts, carries on, or permits to be conducted or carried on, for money or any other consideration, any activity set forth in the definition of “Massage” in this section, and any establishment engaged in, carrying on, or permitting any combination of massage, baths, or health treatments involving massage or baths, shall be deemed a massage establishment.

“Massage Technician” means any person who administers to another person for any form of consideration whatsoever a “massage” as defined in this section. The term “massage therapist” and “massage practitioner” are included within this definition for purposes of this Chapter.

“Massage Technician’s Permit” means the permit required pursuant to the provisions of this Chapter for a Massage Technician.

“Moral Turpitude” means a crime, which infringes upon the moral sentiment of the Community, as distinguished from acts prohibited by law.

“Operator” means all persons who have ownership interest in the Massage Establishment and are responsible for its day-to-day operations.

“Operator’s Permit” means the permit required pursuant to the provisions of this Chapter to operate or manage a massage establishment.

“Owner” means the individual(s) whose name appears on the City business license.

“Person” means any individual, corporation, partnership, firm, association, or other group or combination of individuals of whatever form or character.

“Police Department” means the Police Department of the City of Lodi.

“Recognized School” means any school or institution of learning, which teaches, through state certified instructors, the theory, ethics, practice, profession, or work of massage, which school or institution complies with California Education Code Section 94310 or 94311, and which requires a resident course of study before each student shall be furnished with a diploma or certificate of graduation; or if said school is not located in California, has complied with the standards commensurate with those required in Section 94311 of the California Education Code. Schools offering a correspondence course not requiring actual attendance shall not be deemed a recognized school.

SECTION 2. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 3. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 4. Severability. If any provision of this ordinance or the application thereof

to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.


SECTION 5. This ordinance shall be published one time in the "Lodi News-Sentinel," a daily newspaper of general circulation printed and published in the City of Lodi, and shall take effect 30 days from and after its passage and approval.

Approved this 16th day of July, 2008



JOANNE MOUNCE
Mayor

Attest:



RANDI JOHL
City Clerk

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State of California
County of San Joaquin, ss.

I, Randi Johl, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1813 was introduced at a regular meeting of the City Council of the City of Lodi held July 2, 2008, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held July 16, 2008, by the following vote:

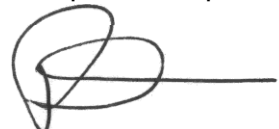
AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, Katzakian, and Mayor Mounce

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None

I further certify that Ordinance No. 1813 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.



RANDI JOHL
City Clerk

Approved as to Form:



D. STEPHEN SCHWABAUER
City Attorney